

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION)	MDL No. 1456
)	Master File No. 01-12257-PBS
)	Subcategory Case No. 06-11337
)	
)	Hon. Patti B. Saris
THIS DOCUMENT RELATES TO:)	
)	
<i>State of California ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Labs, Inc. et al.,</i>)	
Civil Action No. 03-11226-PBS)	
)	

**DECLARATION OF PETER BRASE CONCERNING
THE STATE OF CALIFORNIA'S CLAIMS DATA**

PETER BRASE declares, pursuant to 28 U.S.C. § 1746, that:

1. I am employed as a Practice Support Analyst and Database Analyst at Kelley, Drye & Warren LLP (“Kelley Drye”), and my office is located at 101 Park Avenue, New York, New York 10178.
2. I have twenty two years of experience in computer programming and database management. My responsibilities at Kelley Drye include data analysis, data management, and data querying for large data sets.
3. I make this Declaration based on my own personal review of the electronic data produced by the State of California (“California”).
4. Upon information and belief, California has commenced an action against Mylan Inc. and Mylan Pharmaceuticals Inc. (collectively, “Mylan”) seeking damages arising from the sale of several of Mylan Pharmaceutical Inc.’s drugs – including diphenoxylate/atropine tablet, National Drug Code (“NDC”) # 00378041510, diltiazem ER 240 mg capsule, NDC # 00378534001, phenytoin sodium ER 100 mg capsule, NDC # 00378156010, naproxen 500 mg

tablet, NDC # 00378045105, furosemide 40mg tablet, NDC # 00378021610, cimetidine 400 mg tablet, NDC # 00378037205, and spironolactone 25 mg tablet, NDC # 00378214601 – from the January 1, 1994 to December 31, 2004.

5. On or about August 3, 2007, I received a three CDs entitled “Disk ID 19a (Claims Data Mylan 00378),” “Disk ID 19b (Claims Data Mylan 00378),” and “Disk ID 19c (Claims Data Mylan 00378)” from California, containing claims data produced by California in the above-referenced action (the “Mylan Claims Data”).

6. The Mylan Claims Data consists of eleven archived DAT files entitled “mylan1_nomaic_data.dat” to “mylan11_nomaic_data.dat” that covers the period from the beginning of 1994 to the end of 2004.

7. The Mylan Claims Data contains 162 different data fields, including the following: “CLM_CTRL_NUM_300,” which, upon information and belief, is a unique number identifier assigned to each claim, “CLM_PD_DT,” which, upon information and belief, reflects the date a claim was paid, “CLM_PROD_ID_50,” which, upon information and belief, reflects the NDC for the particular drug that is the subject of the claim, “CLM_REIMBRSMNT_AMT_349,” which, upon information and belief, reflects the total amount paid to the provider, “CLM_ALOWD_AMT_380,” which, upon information and belief, reflects the total amount allowed for the ingredient cost portion of the claim, “CLM_UNITS_OF_SRVC_QTY_327,” which, upon information and belief, reflects the number of units (e.g., pills, tablets, capsules, etc.) dispensed per claim, and “CLM_PROFNL_FEE_AMT_381,” which, upon information and belief, reflects the dispensing fee paid for the claim.

8. Upon information and belief, from January 1, 2000 to June 30, 2002, California applied an across-the-board \$0.25 reduction to all reimbursement claims.

9. Below is data extracted from the Mylan Claims Data for an individual reimbursement claim:

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0202962952801	07242000	00378037205	5.31
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
30	4.05		9.11

10. The data for this claim indicates that, on July 24, 2000 Medi-Cal reimbursed a claim bearing control number 0202962952801 for 30 units of Mylan's cimetidine 400 mg tablet, NDC # 00378037205, for \$9.11, which consisted of an ingredient cost reimbursement of \$5.31, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

11. Below are sample claims from the Mylan Claims Data for the other drugs referenced *supra* in paragraph 4:

Naproxen 500 mg tablet, NDC # 00378045105

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0082954288201	03272000	00378045105	10.94
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
60	4.05		14.74

The above claims data extract indicates that, on March 27, 2000 Medi-Cal reimbursed a claim bearing control number 0082954288201 for 60 units of Mylan's naproxen 500 mg tablet, NDC # 00378045105, for \$14.74, which consisted of an ingredient cost reimbursement of \$10.94, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

Furosemide 40mg tablet, NDC # 00378021610

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0292952050001	10232000	00378021610	2.54
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
100	4.05		6.43

The above claims data extract indicates that, on October 23, 2000, Medi-Cal reimbursed a claim bearing control number 0292952050001 for 100 units of Mylan's furosemide 40mg tablet, NDC # 00378021610, for \$6.43, which consisted of an ingredient cost reimbursement of \$2.54, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

Diphenoxylate/atropine tablet, NDC # 00378041510

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0032043163901	02072000	00378041510	13.68
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
30	4.05		17.48

The above claims data extract indicates that, on February 7, 2000, Medi-Cal reimbursed a claim bearing control number 0032043163901 for 30 units of Mylan's diphenoxylate/atropine tablet, NDC # 00378041510, for \$17.48, which consisted of an ingredient cost reimbursement of \$13.68, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

Spironolactone 25 mg tablet, NDC # 00378214601

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0306956575301	04062000	00378214601	10.05
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
30	4.05		13.85

The above claims data extract indicates that, on April 6, 2000, Medi-Cal reimbursed a claim bearing control number 0306956575301 for 30 units of Mylan's spironolactone 25 mg tablet, NDC # 00378214601, for \$13.85, which consisted of an ingredient cost reimbursement of \$10.05, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

Diltiazem ER 240 mg capsule, NDC # 00378534001

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0238956279401	08282000	00378534001	32.66
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381		CLM_REIMBRSMNT_AMT_349
30	4.05		36.46

The above claims data extract indicates that, on August 28, 2000, Medi-Cal reimbursed a claim bearing control number 0238956279401 for 30 units of Mylan's diltiazem ER 240 mg capsule, NDC # 00378534001, for \$36.46, which consisted of an ingredient cost reimbursement of \$32.66, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

Phenytoin sodium ER 100 mg capsule, NDC # 00378156010

CLM_CTRL_NUM_300	CLM_PD_DT	CLM_PROD_ID_50	CLM_ALOWD_AMT_380
0172960219801	05012000	00378156010	13.97
CLM_UNITS_OF_SRVC_QTY_327	CLM_PROFNL_FEE_AMT_381	CLM_REIMBRSMNT_AMT_349	
60	4.05	17.77	

The claims data produced by California indicates that, on May 1, 2000, Medi-Cal reimbursed a claim bearing control number 0172960219801 for 60 units of Mylan's phenytoin sodium ER 100 mg capsule, NDC # 00378156010, for \$17.77, which consisted of an ingredient cost reimbursement of \$13.97, plus a dispensing fee of \$4.05, less a \$0.25 per claim reduction.

12. I have been informed that California has produced a document entitled "A Survey of Acquisition Costs of Pharmaceuticals in the State of California," (the "Acquisition Cost Report"). I have reviewed portions of a copy of this document.

13. Exhibits 5 and 6 to the Acquisition Cost Report contain, among other things, columns listing the Average of Actual Acquisition Costs and published AWPs on a per unit basis for several NDCs, including for the seven NDCs set forth *supra* in paragraph 4.

14. Set forth in the chart below are the Average Actual Acquisition Costs and the AWPs listed in the Acquisition Cost Report for the seven NDCs set forth in paragraph 4. Also listed in the chart below is the so-called "spread" between Average Actual Acquisition Cost and the AWP. I calculated the "spread" by subtracting the Average Actual Acquisition Cost from the AWP, and dividing the total by the Average Actual Acquisition Cost. I understand that this is consistent with the method used by California in this action to calculate the "spread."

Drug	Average Actual Acquisition Cost	AWP	"Spread"
cimetidine 400 mg tablet 00378037205	\$0.0511	\$1.612	3054%
naproxen 500 mg tablet 00378045105	\$0.0691	\$1.1928	1626%
furosemide 40mg tablet 00378021610	\$0.0159	\$0.1596	904%
diphenoxylate/atropine tablet 00378041510	\$0.0925	\$0.48	419%
spironolactone 25 mg tablet 00378214601	\$0.0974	\$0.415	326%
diltiazem ER 240 mg capsule 00378534001	\$0.4148	\$1.146	176%
phenytoin sodium ER 100 mg capsule 00378156010	\$0.1514	\$0.2451	61.9%

15. I have also been informed that California has produced a document entitled "Study of Medi-Cal Pharmacy Reimbursement" (the "Dispensing Cost Report"). I have reviewed portions of a copy of the Dispensing Cost Report.

16. The Dispensing Cost Report reports that a Medi-Cal providers' average weighted cost of dispensing a drug to a Medi-Cal beneficiary in 2000 was \$7.21.

17. Applying the Average Actual Acquisition Cost reported in the Acquisition Cost Report for the seven NDCs listed *supra* in paragraph 4 and the \$7.21 cost of dispensing listed in the Dispensing Cost Report, I have calculated the following estimated overall costs to the provider to dispense the prescriptions for which claims are listed *supra* in paragraphs 9 through 11. I reached these calculations by multiplying the number of units per claim by the Average Actual Acquisition Cost per unit, as listed in the Acquisition Cost report, and adding to the product \$7.21.

Drug	Provider's Cost
cimetidine 400 mg tablet 00378037205	\$8.74
naproxen 500 mg tablet 00378045105	\$11.36
furosemide 40mg tablet 00378021610	\$8.80

diphenoxylate/atropine tablet 00378041510	\$9.99
spironolactone 25 mg tablet 00378214601	\$10.13
diltiazem ER 240 mg capsule 00378534001	\$19.65
phenytoin sodium ER 100 mg capsule 00378156010	\$16.29

18. I have also extracted data from the Mylan Claims Data indicating that, on November 15, 2004, Medi-Cal paid a reimbursement of \$35.79 for a claim for 30 units of Mylan's diltiazem ER 240 mg capsule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2009.



Peter Brase

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on November 25, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Philip D. Robben
Philip D. Robben